

Memorandum

To: All Council members
From: Thomas A. Till
Date: December 12, 2001
Re: Nine Options for Restructuring Amtrak

Attached are nine options papers for your review prior to our meeting on Friday. These discussion papers are works in progress that provide a range of options for restructuring Amtrak, from more modest reforms to immediate privatization of all or significant segments of passenger rail service.

We look forward to a lively and productive debate. Our objective on Friday will be to find common ground and move toward a consensus on one or just a few options to develop more thoroughly.

JM-ARC, Room 7105
400 Seventh Street, SW

Washington, DC 20590

Phone: (202) 366-0591
Fax: (202) 493-2061

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The ARC is an independent federal commission established under the Amtrak Reform and Accountability Act of 1997 (P. L. 105-134)

1. A UNIFIED NATIONAL OPERATING COMPANY

- Consolidate all federal governmental authorities in the successor corporation of the National Railroad Passenger Corporation ("NRPC"), which shall be a wholly-owned government corporation responsible for administration, planning, and funding of the national rail passenger program.
- As a subsidiary of the NRPC, create a single unified national train operating company (the "Operating Subsidiary"), exclusive of Amtrak's current governmental functions and its real property infrastructure.
- As a subsidiary of the NRPC, create a federal corporation or a regional interstate compact to own the Northeast Corridor real property infrastructure (the "Infrastructure Company").
- As a separate corporate subsidiary of the NRPC, create a separate government corporation to own and ultimately devolve the other (non-NEC) real property assets.
- The NRPC, the Operating Subsidiary, and the Infrastructure Company(ies) should have transparent accounting and separately authorized and appropriated funding from the federal government and, if applicable, from state and other governmental entities.
- Corridors and regional authorities should have the option of independently managing their own operating company services either directly or by soliciting and entering into competitive franchise contracts with qualified rail passenger operating companies to operate the corridors or regional rail passenger services.
- Funding of Infrastructure Companies from Operating Subsidiary, commuter authorities, and freight railroad user fees; federal state and local capital grants; and bonds (both tax exempt and tax credit bonds).
- Funding of Operating Subsidiary and Corridors from ticket revenues, miscellaneous mail and express revenues; other commercial revenues incidental to operating passenger services; state and local operating and capital subsidies; and federal operating funds, possibly from new federal sources such as a new rail trust fund which is funded from a federal gasoline tax "new penny" with a "matching penny" from the states.

2. SEPARATE OPERATIONS AND INFRASTRUCTURE COMPANIES WITH A MIX OF COMPETITIVE AND NON-COMPETITIVE TRAIN OPERATIONS

- Amtrak would operate all corridor trains, including the Northeast Corridor. Stripped of the financial and operational burdens of infrastructure and long distance trains, Amtrak should be able to meet Congress' mandate to operate subsidy free.
- Long distance train operations that would connect corridor trains to one another would be franchised to Amtrak or another entity through a competitive bidding process to minimize losses funded by the taxpayers. Rigid service standards would be developed and contractually maintained. Competition and better service, over time, might result in many of these routes becoming operationally profitable.
- A new government entity would be responsible for funding the development, maintenance and management of all passenger rail infrastructure. The entity would be funded by a trust fund.
- Amtrak and the new infrastructure and corridor operators would protect their current work forces and adhere to contract provisions agreed to with Amtrak.
- The three independent entities would be overseen by a United States Railway Association ("USRA") type of commission similar to the government entity that created, monitored and funded Conrail.

**3. SEPARATE UNIFIED NORTHEAST CORRIDOR OPERATING AND
INFRASTRUCTURE COMPANY; SEPARATE DEVELOPED CORRIDOR
COMPANIES LOCALLY MANAGED; AND A RESIDUAL "NEW AMTRAK"
MANAGING EMERGING CORRIDORS AND OTHER REMAINING AMTRAK
ASSETS AND FUNCTIONS**

- Restructure the existing National Railroad Passenger Corporation ("NRPC") as a wholly-owned government corporation responsible for administration, monitoring, planning, and federal funding of the national rail passenger program in a role similar to the United States Railway Association ("USRA") role with Conrail. This NRPC staff would be relatively small (approximately 50 employees).
- Separate the Northeast Corridor operations and infrastructure into one separate corporation under the control of a board of directors comprised of representatives of the Northeast Corridor states' governors, United States Department of Transportation, and freight railroads which use the Northeast Corridor (Norfolk Southern, CSX and P&W). If the MTA and Connecticut Department of Transportation consent, integrate their portions of the Northeast Corridor with this new separate Northeast Corridor Company. Although initially operated as an integrated operating and infrastructure company, the infrastructure should at a minimum, and from the beginning, operate as a separate profit center and more ideally as a separate subsidiary with the intention of becoming an independent infrastructure company at a later date.
- Allow states or regional authorities or compacts to take over the operations and assets of other developed corridors including the California corridors, the Mid-West Corridors, and the Pacific Northwest Corridor. These developed corridors would be governed by boards of directors comprised of representatives of participating states' governors, freight railroads which use corridor infrastructure or provide corridor infrastructure, and possibly a United States Department of Transportation representative if more than one state is involved with the corridors.
- As a subsidiary of the NRPC, organize a "New Amtrak" that would be the residual national train operating company charged with operating all existing Amtrak services other than (1) the Northeast Corridor services and (2) corridor services operated by state governments and regional coalitions of states (either directly or on a competitive franchise basis). The New Amtrak would may have separate divisions running corridor services and long distance, overnight trains. The new Amtrak would own non-electric locomotives, long haul rolling stock, corridor rolling stock not transferred to states as part of corridor services which they opt to run, and station assets and shops outside of the Northeast Corridor, unless transferred to states as part of corridor operations over which states assume operating control. The residual New Amtrak would be under the control of a board of directors comprised of representatives of the U.S. Department of Transportation, the U.S. Department of the Treasury, a representative of the freight railroads (probably nominated by the AAR), a representative of the investment community, a representative of the labor unions, and possibly representatives of state and local governments.

- The NRPC and all Operating Companies or Subsidiaries should have transparent accounting. Separately authorized and appropriated federal funding, if needed and approved, will be requested through the NRPC and, if funded by the federal government, will be disbursed by the NRPC based on company-proposed business plans which have been approved by the NRPC and provided that the operating companies' actual performance meets minimum business plan objectives contained in their approved business plans.
- Corridors and regional authorities to have the option at some reasonable time in the future (2 to 5 years), and with reasonable notice, to independently manage their own operating company services by retaining the ability to (1) operate such services directly, or (2) to solicit bids and award competitive contracts to qualified train operating companies to operate the corridor or regional rail passenger services as franchisees under contract to the corridors and/or regional authorities.
- The train reservations and other operational computer functions initially would be provided by Amtrak's existing staff and would reside with either the residual New Amtrak or as an independent subsidiary of the NRPC. Various operators would have the right over time to contract out reservations and other computer services to other vendors, but all train operators would have the obligation to use reservation systems that allow joint reservation and ticketing of passengers traveling on more than one corridor and/or intercity train.

4. A NATIONAL SYSTEM OF REGIONAL COMPANIES

- Consolidate all federal governmental authorities for the national rail passenger program in the successor corporation of the National Railroad Passenger Corporation ("NRPC"), which will be a wholly-owned government corporation responsible for administration, planning, franchising, and funding of the national rail passenger program.
- Train operations would be conducted by regionally-organized train operating companies (e.g., West, Midwest-Central, Northeast, Southeast, and – optionally – a separate long-haul train operating company) that would be subsidiaries of the NRPC:
 - Regional operating companies. Train operations would be conducted by independent subsidiary companies organized as regional monopolies. The boundaries of the operating companies would be established by the NRPC to achieve the best possible balance of financial and operational performance.
 - An option within the boundaries of the regional operating companies would be for states or regional authorities or compacts that currently have, or care to establish in the future, train operations independent of the regional operating companies to apply to NRPC for such authority. This authority would permit them to apply for capital assistance and operating franchises to the NRPC and to operate train services either directly through the regional operating company or by retaining a private contractor. For both the regional companies and any independent authorities or compacts, capital funds would be provided on a federal-state matching basis. Operating losses for such authorities/compacts would be self-funded.
 - Long-haul train operations could either be integrated into the regional companies, or organized as a separate operating company. Long-haul trains could be operated directly by the long-haul operating company subsidiary or under competitive contracts issued directly by the NRPC. The network of long-haul trains would be designed by the NRPC based on criteria established in law. Trains would be ranked in order of estimated operating losses from lowest to highest. No train would be operated unless funding were provided to cover the costs of the contract. Bids for long-haul franchises would focus on proposals for economical provision of train operations and maintenance, coach class service, sleeper or luxury service, and Mail & Express services.
- As a subsidiary of the NRPC, create a federal corporation or a regional interstate compact to own the Northeast Corridor real property infrastructure (ownership could be transferred from Amtrak to DOT by having the Secretary exercise provisions of the mortgage agreement between DOT and NRPC providing for accelerated payment of the mortgage prior to maturity). The Northeast Corridor Infrastructure Corporation (NECIC) could be operated directly by employees of the NECIC or by a contractor selected through a competitive process by the NECIC Board of Directors.
- Transition. Changes would be implemented after an appropriate transition period that would be determined by the nature of the specific assets or operations to be transferred.

5. A NATIONAL SYSTEM OF REGIONALLY-CONTROLLED CORRIDORS WITH FEDERALLY-SUBSIDIZED LONG-HAUL TRAINS

- Consolidate all federal governmental authorities for the national rail passenger program in the successor corporation of the National Railroad Passenger Corporation (NRPC), which shall be a wholly-owned government corporation responsible for administration, planning, franchising, and funding of the national rail passenger program.
- Train operations would be conducted on two levels:
 - Corridor-based operations. Corridor operations would be governed by state or regional authorities or compacts that would apply for capital assistance and operating franchises to the National Railroad Passenger Corporation. The authorities/compacts would design networks and operating and capital plans, apply for specific delegations of train operating authority from the NRPC, apply for federal-state matching capital funds to make investments in infrastructure and equipment, implement capital improvements and acquisitions, and operate train services, either directly or through contracts with private operators. Capital funds would be provided on a federal-state matching basis. Operating losses would be funded by the regional authorities or compacts.
 - Long-haul operations. Long-haul trains would be operated under competitive contracts issued directly by the NRPC. The network of long-haul trains would be designed by the NRPC based on criteria established in law. Trains would be ranked in order of estimated operating losses from lowest to highest. No train would be operated unless funding were provided to cover the costs of the contract. Bids for long-haul franchises would focus on proposals for economical provision of train operations and maintenance, coach class service, sleeper or luxury service, and Mail & Express services.
- As a subsidiary of the NRPC, create a federal corporation or a regional interstate compact to own the Northeast Corridor real property infrastructure (ownership could be transferred from Amtrak to DOT by having the Secretary exercise provisions of the mortgage agreement between DOT and NRPC providing for accelerated payment of the mortgage prior to maturity). The Northeast Corridor Infrastructure Corporation (NECIC) could be operated directly by employees of the NECIC or by a contractor selected through a competitive process by the NECIC Board of Directors.
- Transition. Changes would be implemented after an appropriate transition period that would be determined by the nature of the specific assets or operations at hand.

6. FIVE YEAR TRANSITION FOR SPECIFIED STRUCTURAL CHANGES

A. Government Oversight

- Establish USRA-type permanent oversight entity as National Railroad Passenger Corporation (as successor to existing NRPC) and immediately transfer existing Amtrak policy, Reform Board oversight, Congressional interface and funding functions to the new NRPC.
- New NRPC would also hold Amtrak's existing statutory franchise to operate over the lines of freight railroads at incremental cost and with operating priority.
- Eliminate existing Amtrak Reform Board and establish new NRPC Board with broad regional representation to perform NRPC functions.

B. Train Operating Company (or Companies)

- Retain existing national train operating company organizational structure for a specified transitional period (e.g., 5 years).
- During transitional period, train-operating company, under the guidance of the NRPC, would establish subsidiary corporations to provide train-operating services over NEC, other federally designated corridors, and for inter-corridor long-haul services.
- Transition period would allow train-operating subsidiaries to implement efficiencies that would enable it to be a provider of services over one or more corridors pursuant to competitively-bid franchise arrangements after the transition period.
- During the transition period, only the national train-operating company and its subsidiaries would be able to operate under NRPC statutory franchise. As under existing law, however, regions or states would be free to contract with other operators for specific services outside of the statutory access rights.
- During transition period, train operating company would also establish a separate subsidiary to hold ownership or lease rights to operating equipment; at end of transition period, equipment subsidiary could be privatized or remain directly under the ownership and control of the NRPC (which would enter into lease arrangements with operating company franchisees); to compete more effectively, train operating company could be privatized after transition period.
- At end of transition period, NRPC would configure the specific corridors or routes that would be subject to competitively-bid franchise arrangements; all corridors and routes would be automatically subject to competitively-bid franchise arrangements (including negative bids) after the transition period, with the NRPC train operating subsidiaries acting as fall-back operators if no competitive bids are proffered.

- Franchisees would provide services under contract with either the NRPC or directly with regions and states for both corridor and inter-corridor services and would be authorized by the NRPC (with FRA regulation of safety requirements) to operate under the NRPC statutory franchise.
- All franchisees authorized to operate under statutory franchise rights would be subject to same labor (RLA), FELA and railroad retirement laws that Amtrak is currently subject to; current Amtrak train operating employees would be granted hiring preference with new franchisees to the extent that new hiring is necessary; consistent with general railroad industry practice, however, franchisees would be free to negotiate their own labor agreements with their own employees and would not be required to take over existing Amtrak contracts.

C. NEC Infrastructure (and other Infrastructure Owned by Amtrak)

- NRPC establishes separate subsidiary (government corporation) to hold title to the NEC infrastructure and Amtrak-owned infrastructure outside the NEC (e.g., Chicago Union Station, Michigan tracks); ownership and management of NEC repair shops transferred to maintenance and repair subsidiary (government corporation) established within NEC infrastructure entity.
- NRPC also sets up separate subsidiary (government corporation) to own and manage Beech Grove facility.
- Existing Amtrak employees engaged in infrastructure functions transferred to NEC or Beech Grove subsidiaries under existing labor contracts.
- NEC infrastructure subsidiary (or government agency) would be established with separate board of directors representative of the NEC users.
- After transition period (e.g., 5 years), NRPC determines whether to privatize NEC and Beech Grove maintenance and repair shops, lease them to private entities, or otherwise operate or dispose of the facilities.
- NEC infrastructure subsidiary granted authority (with concurrence of NRPC) to: (1) sell or transfer unneeded assets within the NEC or acquire needed assets within the NEC from states and localities or (2) sell or transfer all assets outside the NEC to states, localities or other entities.
- After the transition period, NRPC granted authority to contract out management of NEC to private contractors (under existing labor arrangements negotiated between the NRPC with NEC employees as may be subsequently modified), or to transfer ownership and management of NEC to NEC states or a regional authority under appropriate terms and conditions ensuring fair use and proper maintenance.

7. TRANSITION TO COMPETITION

A. Phase one (two years)

- Amtrak's business plans, operating performance and federal funding are overseen by the NRPC, reconstituted as an USRA-type of program administration organization. Over this transitional oversight period, this organization would also -
 - Design appropriate train operations franchises, the terms for franchises and minimum service requirements;
 - Establish a decision-making framework for evaluating proposed high-speed rail projects;
 - Establish a decision-making framework for operating other train service, including long-distance routes;
 - Establish a competitive bidding process for franchising train operations and maintenance of the NEC infrastructure;
 - Establish and implement, with Amtrak, a plan for putting the NEC in a state of good repair.
- Immediately, Amtrak train operations (including mail and express and mechanical shops) and infrastructure would be accounted for separately. Within one year, train operations and infrastructure are organized as separate companies.
- Amtrak serves as the nation's passenger operator (except as indicated below), manages the NEC infrastructure, performs mail and express business, and operates the heavy repair and rebuilding mechanical shops, all under contracts with the federal government. Contracts would include performance standards requiring continuous improvements in performance (cost recovery, customer satisfaction and ridership, for example). These performance standards are intended to help Amtrak improve its overall performance to be in a good position to compete with other service providers by phase two of the restructuring.
- Pilot projects are initiated to franchise one or several Amtrak routes (e.g., California Corridor Trains, Coast Starlight, and/or AutoTrain).
- Ownership and responsibility for non-NEC assets and train operations are divested to the states, local government, or private enterprises (to the extent possible).

B. Phase two (two years)

- Passenger train operations on the NEC and elsewhere, NEC infrastructure maintenance, mail and express operations are franchised through competitive bidding (positive and/or negative bids). (The contract to maintain the NEC could go to the same entity performing operations on the corridor or to another company).
- Passenger train operators bid as part of their franchise agreements to operate equipment repair shops or contract with Amtrak or another service provider for locomotive and car maintenance.
- The NRPC oversees the franchising process, administers the contracts, and monitors any federal funding that may be provided.
- States developing high-speed rail corridors and/or providing operating subsidies on lower-speed trains have the right to manage the franchising process for those operations and select the service providers of their choice using their own selection criteria.

C. Phase three

- The remaining Amtrak train operating company is privatized.

8. A COMPETITIVE SOLUTION FROM THE BEGINNING

- Immediately state the Council's intention for a private sector solution for the passenger rail operating company and possibly for the infrastructure company. The transition should begin immediately so that there is a clean break, but should be phased in at a pace that will best facilitate an orderly implementation.
- Consolidate all federal governmental authorities in the National Railroad Passenger Corporation ("NRPC"), which shall be a wholly-owned government corporation responsible for administration, planning, and funding of the national rail passenger program. The NRPC also will ensure that travelers can make reservations and obtain joint tickets on any of the rail passenger services it oversees; and it will offer to handle risk management functions, including bidding and purchasing of insurance, re-insurance and funding of self-insurance (claim deductibles) reserves, setting of safety policies and practices, and monitoring of safety programs as part of overall risk management to minimize the cost of insurance and self-insured losses.
- As a clearly defined private sector company separate from the NRPC, create a single, private sector national train operating company, exclusive of Amtrak's current governmental functions and its real property infrastructure (including Northeast Corridor infrastructure).
- Create a federal corporation or a regional interstate compact to own the Northeast Corridor real property infrastructure (could be as a result of accelerating the federal government's mortgage), ideally as a private sector company funded by the federal and other governments. Possibly structure the new corporation patterned after other instances in which the federal government owns the assets, but competitively bids the operation of the assets to a private sector company (i.e., a "go-co" working under contract at federally-owned nuclear waste treatment facilities).
- Corridors and regional authorities should have the option of independently managing their own operating company services with the ability to run the trains themselves or to solicit competitive contracts from private companies to operate their corridors or regional rail passenger services as franchisees

9. LIQUIDATION/PRIVATIZATION

Basic principle: Any plan for a “restructured and rationalized national intercity rail passenger system” that ARC recommends must require that the system be self-sufficient.

➤ **NEC Infrastructure:**

- entire NEC infrastructure (including that owned by commuter agencies) should be owned by an infrastructure company that could be an interstate compact or a federal corporation
- infrastructure company would charge market access rates to all users
- representatives would be appointed to the infrastructure company board from the NEC states

➤ **NEC Intercity Train Operations:**

- NEC train operations would be privatized through bids to the private sector for the purchase of Amtrak’s rights to NEC services
- Private company would be subject to minimal regulation (e.g., minimum service guarantees and safety)
- There would be no public subsidy if Amtrak NEC operations privatized
- A new regulatory body (NEC Public Service Commission) would be created to oversee privatized NEC operations
- if commercial privatization is not feasible, former Amtrak service should be competitively bid for a limited period of time; train companies would bid to operate a specified schedule/standard of service for a minimum subsidy level; services would be competitively rebid at the end of the contract
- under this operating scenario, a new service sponsoring organization would be created by the NEC states to establish schedules and service levels and seek competitive procurement
- under either operating scenario, federal support could be provided at current real levels;
- existing labor contracts at time of privatization/competitive bids would continue in force and apply to the new operator; conventional collective bargaining would be conducted when contracts expire; same labor approach would be applied to new procurements
- interim step could involve creation of a new government-owned operating company, which would either be privatized or be eventually assumed by the winning contract awardee.

➤ **Services Outside the NEC:**

- states would contract for services directly or through interstate compacts
- “proportional” federal funding could be continued predicated on continued use of competitive bids or privatization
- existing labor contracts would be taken over by competitive bid awardee subject to collective bargaining after contracts expire

- states would likely only support corridor service; long-haul service (which is a leisure market and not a travel market) should be operated only to extent that private sector able to operate them profitably
- priority for long-haul trains over freight trains should be repealed; consideration should also be given to repeal of statutory priority for all existing intercity rail passenger operations (to assure continuing competitiveness of the freight rail industry)
- all passenger trains should pay their fully-allocated track access costs and access should be fully negotiable with no statutory compulsion

➤ **Interim Arrangements:**

- A federally- owned company (Amtrak Liquidation Corporation) should be created to manage transition to new Amtrak organizational structure (e.g., divestiture of NEC infrastructure, privatization or competitive bidding for NEC services, transfer to states of corridor operations, and privatization of long-haul operations)
- all assets and employees of Amtrak transferred to Liquidation Corp.
- Liquidation Corp. would be managed by a trustee “in same manner as if Amtrak filed for bankruptcy”
- Amtrak Board would be disbanded
- Terms and conditions of in-force labor contracts would be applied to Liquidation Corp.
- Mandate of trustee would be “to seek self-sufficiency as quickly as possible, while preserving as much rationally justifiable service as possible” (includes as a minimum existing NEC and short corridor service supported by state funds)
- Trustee would be directed to reduce administrative staff and sell excess assets (e.g., all trackage outside of the NEC)
- A transitional advisory committee would be established by the trustee composed of airline and other transportation professionals
- The Liquidation Corporation would continue to operate (as the legal successor to Amtrak) until its responsibilities are executed; there would be no legal successor to the Liquidation Corporation
- N.B. The privatization of the Japanese National Railways included establishment of a liquidation corporation.